

# EXHIBIT 23

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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x  
2  
3 IN RE: TERRORIST ATTACKS ON  
3 SEPTEMBER 11, 2001 03 MDL 1570  
4  
4 -----x  
5

5 April 12, 2011  
6 2:00 p.m.  
7

7 Before:  
8

8 HON. FRANK MAAS,  
9

9 Magistrate Judge  
10

10 APPEARANCES  
11

11 ANDERSON KILL & OLICK PC  
11 Attorneys for O'Neill Plaintiffs and PEC  
12 BY: JERRY S. GOLDMAN  
12

13 KRIENDLER & KREINDLER LLP  
13 Attorneys for Plaintiff Ashton  
14 BY: JAMES P. KREINDLER  
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15 COZEN O'CONNOR  
15 Attorneys for Plaintiff Federal Insurance  
16 BY: SEAN CARTER  
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17 MOTLEY RICE LLC  
17 Attorneys for Plaintiffs Burnett & Eurobrokers  
18 BY: ROBERT HAEFFELE  
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19 MCMAHON & ASSOCIATES  
19 Attorneys for Defendants IIRO, MWL and Wael Jelaidan  
20 BY: MARTIN MCMAHON  
20

21 LAW FIRM OF OMAR T. MOHAMMEDI LLC  
21 Attorneys for Defendants WAMY and WAMY International  
22 BY: OMAR T. MOHAMMEDI  
22 FREDERICK GOETZ (via telephone)  
23

24 ALSO PRESENT: STEVEN COTTREAU  
24 STEVEN BARENTZEN  
25

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1 here to observe, I believe.

2 THE COURT: We will find out as we go along.

3 As I think I indicated in an order there are  
4 essentially three applications that I propose to addressed  
5 today: First, the IIRO, Muslim World League and Wael Jelaidan  
6 application; then the plaintiffs' March 16 letter about the  
7 Muslim World League and IIRO documents; and then the WAMY  
8 application. W-A-M-Y.

9 Before I get to those, one comment I had is that it is  
10 hard to deal with discovery requests that you folks are all  
11 knowledgeable about when the actual request is not furnished to  
12 me in the exact words that were used. And the local rule, 37.1  
13 of the Civil Rules, requires a verbatim quote. In some  
14 instances I was given it, and in some instances I was able to  
15 back into it, and in some instances I may have had some other  
16 papers, but I believe there were times when I wasn't given  
17 anything that told me precisely what the request was.

18 It may be that I was just looking in the wrong places  
19 and actually had been furnished it, but in general the more  
20 clear you can make it to me in the actual letter requesting or  
21 opposing something, the better off we will all be.

22 So, let me turn first to the IIRO, Muslim World League  
23 and Wael Jelaidan of March 3 and anything that flows from that.

24 Yes, Mr. McMahon?

25 MR. MCMAHON: Yes, your Honor, I just want to make a  
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1 preliminary observation. Whether through my inadvertence or  
2 miscommunication, I was under the impression that we were going  
3 to only argue today our application for more specificity in  
4 terms of disclosures and also WAMY's application for more  
5 specificity disclosures.

6 I have secured some affidavits from Saudi Arabia  
7 pertaining to the efforts that my clients have undergone here  
8 in terms of discovery, and I think hearing their, I'm going to  
9 call it, first motion to compel, your Honor, I think we can  
10 defer that to a hearing where we combine the first motion to  
11 compel along with the more comprehensive second motion to  
12 compel, you know, to save judicial resources.

13 If necessary, I guess I could argue that today. As  
14 counsel commented, I think we are getting closer on the subject  
15 matters on the first motion to compel, but I want to go on  
16 record, your Honor, that I really thought we were just going to  
17 hit the applications, and that might take some time. I don't  
18 know.

19 MR. CARTER: Your Honor, I think the parties addressed  
20 in their letters whether or not that application should be  
21 heard today, and I think we were very clear that we thought it  
22 should because it was fully briefed.

23 THE COURT: I thought I had issued an order that said  
24 it was going to be discussed today. Am I mistaken about that?

25 MR. MCMAHON: No, I saw that, your Honor. And Mr.

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1 Carter knew what my position was in terms of that I didn't  
2 think it had been properly, say, teed up, and that it would be  
3 better to move that into the more consolidated motion to  
4 compel. But if your Honor prefers, we can argue that today.

5 THE COURT: And it may be that as to some parts of it  
6 I reserve based on what you tell me. But why don't we see what  
7 happens as we go along.

8 So, why don't we first turn to your affirmative  
9 application concerning plaintiffs' disclosures.

10 MR. MCMAHON: First of all, your Honor, thank you for  
11 backing us into the afternoon slot. It avoids me getting up at  
12 5:15, 5:30 in the morning.

13 We are now eight years out, your Honor, and we have  
14 been hit with these allegations of this worldwide conspiracy to  
15 fund international terrorism. Plaintiffs have accused IIRO,  
16 MWL and Wael Jelaidan of participating in this international  
17 campaign to fund international terrorists. Our clients have  
18 been sued for a trillion dollars, your Honor. I guess if you  
19 add the triple demand, that's \$3 trillion. They have been  
20 accused of heinous international criminal acts although nobody  
21 has been indicted. And I think it's about time that we held  
22 the plaintiffs' feet to the fire in terms of specificity, your  
23 Honor.

24 I think you know what the case law is here. The  
25 magistrate has issued an opinion, I think it was the Sheila v.

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1 New York City case. There was also a case we gave you which  
2 was the Sender v. Man case from Colorado, your Honor, involving  
3 196 brokers. If the spoken party will not even make the effort  
4 to make a reasonable inquiry of witnesses, then it cannot  
5 simply produce a laundry list via the party. As such, it would  
6 defeat the purpose of Rule 26(a).

7 It is our position, your Honor, that they have  
8 produced a laundry list to us, and I will tell you what we have  
9 been specifically given.

10 We have been given the names of 1,632 individuals.  
11 That's if you include attachment A, your Honor. We have been  
12 given Guantanamo Bay detainees who apparently may tell us  
13 something. I am not sure they actually identified which one  
14 would tell us what. I'm pretty sure they don't.

15 THE COURT: It's probably the first time Osama bin  
16 Laden, former Senator Kerry and Diane Feinstein ended up on the  
17 same list but...

18 MR. MCMAHON: It gets more amusing, your Honor. There  
19 are some people on that list who are dead. I don't know how we  
20 are going to talk to them.

21 THE COURT: Don't understand plaintiffs' counsel; they  
22 are nothing if not tenuous.

23 MR. MCMAHON: I've learned, your Honor.

24 The individual who died is Jamal Khalifa. Just to  
25 educate your Honor, this is the alleged hot button guy in the

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1 Philippines for IIRO. What the plaintiffs never mentioned is  
2 that although he was convicted of terrorism charges in absentia  
3 in Jordan, the Jordanian Court of Cassation completely  
4 exonerated him on all of those charges.

5 We have basically inaccessible evidence, foreign  
6 intelligence reports. Where do I go, to Paris and ask the  
7 French intelligence agency to give me some documents?

8 They talk about F.B.I. 302s. Your Honor, I was in a  
9 big case in Washington, and I actually got all the 302s because  
10 they were Brady material. It was fascinating, and it helped  
11 our case tremendously. But I'm not aware of any mechanism  
12 whereby I can get those 302s. So, I think they are virtually  
13 inaccessible.

14 THE COURT: Well, one of the things that the  
15 plaintiffs' disclosure says -- and I went back to check, and I  
16 will ask plaintiffs' counsel whether it's correct as to all  
17 categories of documents -- there are, as I counted it, 23  
18 categories of documents in the amended initial disclosures, at  
19 the end of which it says the aforementioned documents are in  
20 the possession of the Plaintiffs' Executive Committees.

21 So, as to any of these intelligence reports, or 302s,  
22 or whatever, the representation is that you don't have to go to  
23 some foreign country or anything but, rather, you can obtain  
24 them from plaintiffs' counsel.

25 Is it correct that all 23 categories of documents are  
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1 in the possession of plaintiffs' counsel or plaintiffs'  
2 executive committee?

3 MR. CARTER: Your Honor, that is true. And maybe some  
4 context would help. Essentially, you know, the plaintiffs had  
5 to build this investigation post-September 11, and in doing  
6 that there are essentially a couple categories of information  
7 that we have.

8 We have information that we as counsel collected  
9 ourselves, and that's sort of a broad array. You have dozens  
10 and dozens of congressional hearings that were held  
11 post-September 11 that we filtered through.

12 You have the complete archive of the 911 Commission,  
13 at least to the extent it's been released, which is the  
14 National Archives in Washington, and we sent people, and we  
15 read through all of that.

16 You have 302 statements which may have been released  
17 in some sort of prosecution, those kinds of settings. You have  
18 the Department of Defense from Guantanamo Bay, tens and tens of  
19 thousands of pages of documents that we filtered through to  
20 identify what pieces of information might be relevant to claims  
21 in the litigation.

22 So, as a result of those efforts we have collected all  
23 of this information and we are in possession of those  
24 materials.

25 Now, what the defendants really want is to know what  
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1 is our investigation and what do you have. That's essentially  
2 the focus of all the discovery that's being conducted. In  
3 general terms if you look at the structure of the Federal  
4 Rules, the advisory committee notes, they view with disapproval  
5 efforts to essentially build your case on the back of the  
6 efforts conducted by another party. And it's in that vein that  
7 a lot of the cases have held you can't simply obtain from  
8 another party documents that they have culled from a massive  
9 public record and select it as being significant. You can't  
10 necessarily get directly from them stuff that they've gone  
11 through the effort to obtain via the Freedom of Information  
12 Act.

13 Now, with all of that said, we recognize that  
14 advancing a global objection to the discovery of that  
15 information on work product grounds doesn't advance the ball  
16 very much or at all.

17 THE COURT: You did do that.

18 MR. CARTER: Well, the objections are there, your  
19 Honor, but, you know, what really needs to happen here is that  
20 we have some structural problems. We have this information.  
21 To the extent it's generated by government officials or  
22 government agencies, you know, we have collected it, and we are  
23 prepared to disclose that kind of material in the context of  
24 discovery to move the case forward, to the extent it's relevant  
25 to the claims.

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1           What we need is for this exchange of information to be  
2 somewhat simultaneous, and I think that's what the scheduling  
3 order contemplated, that we would have a rolling production by  
4 both sides, and that preserves some integrity in the process.  
5 And we are perfectly happy to do that as long as we are getting  
6 reciprocal productions from the other side; and so far we're  
7 not.

8           Some of the objections also, your Honor, are in there  
9 because in all candor on day one of the rolling production  
10 period none of us knew comprehensively everything that was in  
11 our possession. Hundreds and hundreds of thousands and  
12 potentially millions of documents, and we have to assert  
13 objections to the extent they may cover materials. At the end  
14 of the rolling production period I think everyone is going to  
15 see that we have given them the information that we have  
16 collected that they are fairly entitled to.

17          The problem is we made a significant production of  
18 documents on day 1 of the rolling production period, January 2  
19 I believe it was, or right around then. We didn't receive a  
20 single document on that day from any of the defendants, and we  
21 have received very little since.

22          And in recent telephone conversations we have been  
23 advised that certain of the defendants don't even expect to  
24 complete their indexing of potentially responsive documents  
25 until June or July. And what we really need I think in place

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1 at this point, your Honor, is some sort of structure that  
2 contemplates that there is going to be this reciprocal  
3 exchange, and I think we can get past a lot of these sort of  
4 isolated nitpicky fights with one another.

5 THE COURT: Let me hear some more from Mr. McMahon.

6 MR. MCMAHON: Well, your Honor, I don't know. I saw  
7 that, and I was going to write Mr. Carter a letter to confirm  
8 all of this stuff is indeed available for the record.

9 My concern would be, take the topic of people that are  
10 incarcerated in either American or foreign prisons or  
11 something, do they have interviews of these people? Do they  
12 have interviews with the Guantanamo detainees? Or do they have  
13 a list of things about Guantanamo? That's what my problem is.

14 THE COURT: Well, let's assume that they interviewed  
15 somebody. Unless that person is going to appear at a trial or  
16 offer an affidavit or a declaration in opposition to the  
17 summary judgment motion, the interview doesn't move the ball  
18 forward a whole heck of a lot for them other than this  
19 background information.

20 If you say there is no evidence of X, and they have an  
21 interview of somebody, it seems to me that Judge Daniels is  
22 unlikely to consider the hearsay interview in opposition to a  
23 summary judgment motion. So, ultimately they brought the case  
24 and it's their burden to adduce admissible evidence in support  
25 of their claims.

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1           MR. MCMAHON: Well, your Honor, maybe I should just  
2 make this very simple, because I am kind of a simple attorney.

3           To the extent they claim there are a series of five or  
4 six terrorist incidents -- first the World Trade Center bombing  
5 '93; Khobar Tower bombing in '96; Embassy bombings in '98 in  
6 Eastern Africa; 2000 the attack on the Cole; and 2001 of course  
7 our 9/11 tragedy -- I don't know if it's too much to ask, but I  
8 would like to know who is the individual that says IIRO  
9 supported the attack on the USS Cole, and what is the document  
10 that says this? Not this 19 whatever it is CIA document akin  
11 to the golden chain.

12          I would like to know, for example, are you saying that  
13 the Muslim World League actually attacked the 9/11 towers? Or  
14 aided in the funding of? I'm sorry, your Honor, well, who says  
15 that? Who is the individual that says that? And where is the  
16 documents? That's what I'd like to see, your Honor. Because  
17 the more I read about Rule 26 research, it is designed to cut  
18 down on expenses of everybody and get right to it. And these  
19 are the potential witnesses that we will be calling. And  
20 sometimes that will certainly aid in potentially a settlement,  
21 for example, that they have somebody who saw the car go through  
22 a red light, I don't know.

23          But that's what I'm asking for, your Honor. That's  
24 the relief I seek. And I don't want to file another motion  
25 simply because -- well, let me say this: I would like to at

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1 least inspect everything they have and then have the right to  
2 come back and renew this application if possible.

3 THE COURT: Well, one of the ironies is in complicated  
4 commercial cases there is apparently some sentiment among  
5 commercial lawyers on both sides, plaintiffs and defendants, to  
6 eliminate the Rule 26(a)(2) disclosure requirement and just get  
7 to discovery. And this case may be a paradigm for why that's  
8 not a bad approach, but I guess we're on the track we are on.

9 Let me tell you what I think is going to be  
10 appropriate, because I do think a list of, I didn't count them,  
11 a thousand names or even hundreds of names, many of which are  
12 unlikely to testify at the trial -- I would think if Osama bin  
13 Laden was cooperating with the plaintiffs he would have some  
14 trouble getting into the courthouse to Judge Daniels' courtroom  
15 for the trial. At least I would hope that would be the case.

16 MR. MCMAHON: Where would he go for the visa, your  
17 Honor?

18 THE COURT: That's right. But what I think I'm going  
19 to direct is that the plaintiffs produce within 30 days a list  
20 of all the potential witnesses among those listed on their  
21 26(a)(1) disclosures who they have the present ability to  
22 depose either because the individual is cooperating with them  
23 or because that person is subject to service of process, or for  
24 whatever other reasons may exist, and whom they have a present  
25 intention either to depose or to secure a declaration from,

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1 which isn't exactly what Rule 26(a) contemplates but should  
2 eliminate dead folks, should eliminate people who are in the  
3 mountains of Afghanistan and the like, and narrow it to what  
4 may still be a large list but hopefully won't be a thousand  
5 people.

6 MR. CARTER: Your Honor, I think one of the reasons  
7 that you see certain names of people whom you have identified  
8 as individuals unlikely to show up at the courthouse is because  
9 some of those people may have said things that would be  
10 admissible under the rules of evidence even though they're not  
11 present in the courtroom.

12 THE COURT: But that will come in not in the form  
13 of -- well, it may come in in the form of a document that  
14 encapsulates that statement, and it will only come in, I  
15 assume, if there is some proof that a conspiracy existed such  
16 that the statement of Osama bin Laden, for example, can be used  
17 against a defendant who is actually at the trial.

18 MR. CARTER: That's correct, your Honor. And from our  
19 perspective we were doing this on the front end before any  
20 discovery had occurred, and so we necessarily had to include  
21 people who may show up.

22 I can give you a perfect example is Khalid Sheikh  
23 Mohammed who is now going to go through this process of being  
24 tried in a military tribunal, and we don't know what he may  
25 say. Based on some of his interviews, we think he may say

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1 something directly relevant to remaining claims in this  
2 litigation. So, that's how the universe of witnesses was  
3 defined, we think in accordance with the requirement of the  
4 rule.  
5 The complaint seems to be there are too many people  
6 who have knowledge. And I understand that your Honor's attempt  
7 to answer that is to have us identify people with whom we're  
8 presently able to secure a deposition, or some statement to  
9 that effect. And the plaintiffs don't have a problem with that  
10 save for concerns about the efforts that have been ongoing to  
11 identify nontestifying consultants.

12 Now, I don't think that they fall within the scope of  
13 the order you --

14 THE COURT: Well, I said somebody who you have the  
15 intention to either depose or introduce a statement of. So, if  
16 for example let's assume that there is somebody who is on the  
17 terrorist list not in the United States but on plaintiffs'  
18 payroll as a consultant, which may be farfetched, but if that's  
19 somebody who you are not presently planning to call and don't  
20 intend to use directly to support your case, that person  
21 wouldn't be on the list I have described.

22 MR. CARTER: I understand, your Honor. That's fine.

23 THE COURT: OK. But for each person who is on the  
24 list I am going to require that you set forth topics as to  
25 which you believe that person has personal knowledge of

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1 discoverable information so that we don't have the same list of  
2 seven or eight incredibly broad topics for Senator Feinstein  
3 and Osama bin Laden -- I will pick two people hopefully at  
4 different extremes -- and everybody in between.

5 And what I am interested in is a description of what  
6 they are knowledgeable about that's not based on conjecture but  
7 based on some good faith basis for believing that they have  
8 some knowledge in that particular area.

9 Just so we're clear, I'm not directing a list that  
10 will supersede your prior 26(a)(1) disclosures. This is merely  
11 a supplement. So, your list of 1,000 names and main topics  
12 will continue to exist as your Rule 26 disclosure. I guess  
13 this is the CliffsNotes version of it.

14 MR. CARTER: Your Honor, I think one thing that we  
15 would like to ask is that there be some similar effort on the  
16 part of the defendants to identify witnesses.

17 The difficulty arises because the current structure of  
18 Rule 26(a) simply requires a defendant to identify individuals  
19 they may use to support a defense. That doesn't necessarily  
20 mean that they're identifying all the witnesses within their  
21 organization who have relevant knowledge concerning the claims  
22 and defenses. So, to the extent there are folks within these  
23 organizations who have relevant knowledge, we would like to  
24 have them identified by the defendants with a disclosure of the  
25 nature of their knowledge.

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1           THE COURT: Well, let's take it a step at a time. I  
2 think I want to limit myself for the moment to 26(a)(1)  
3 disclosures or the modification I have described of it. And I  
4 know somebody's letter -- perhaps yours -- told me you haven't  
5 gotten a lot of 26(a) disclosures as yet. And let's just deal  
6 with it as we go along. Because I think also documents will  
7 inform the discussion once you get documents.

8           At the same time I want to indicate to the plaintiffs  
9 that I do not expect the sort of nonspecific list of topics  
10 that was provided last time, because I don't think you want me  
11 to inform the conclusion that, as the defendants allege you are  
12 doing, that this is simply a fishing expedition on the  
13 plaintiffs' part. Because if I were to conclude that, I would  
14 probably -- notwithstanding the fact that both sides said this  
15 is not a case in which the ten witness per side rule ought to  
16 apply -- I might nevertheless severely restrict the number of  
17 depositions that plaintiffs are allowed if I do conclude that  
18 we're just engaged in a fishing expedition here.

19           Let me focus in on the plaintiffs for the moment.  
20 After document discovery closes, and you have had an  
21 opportunity to review the documents, I may -- I'm not saying I  
22 will -- but I may require that the list I have just described  
23 be supplemented before discovery closes with a list of  
24 contemplated trial witnesses and the subjects that they may  
25 testify about, so that defendants can make informed decisions

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1 about who they ought to depose rather than looking at a list of  
2 200 potential witnesses, if that's what the number is.

3 I don't know what number will be provided in response  
4 to my directive about a narrower list, so I'm not at all  
5 certain that I will require anything like that, but that's  
6 something I have been considering.

7 As to the documents where there is a representation  
8 that all of those documents are in plaintiffs' collective  
9 possession, I guess, I'm not going to require that there be  
10 further specificity.

11 And I understand the objection that the plaintiffs  
12 have made in terms of attorney work product, and I do think a  
13 request that is couched in terms of "give us everything you  
14 have that you have collected" would, for example, be improper.  
15 And in particular something that said "give us everything that  
16 counsel has collected" would be improper.

17 But my view is that if there is a document that  
18 counsel have collected that responds to a specific subject  
19 matter request, for example, there is a request for all  
20 documents reflecting payments direct or indirect from IIRO to  
21 terrorists, if there is a document that plaintiffs' counsel as  
22 agents for plaintiffs have obtained from whatever source,  
23 whether it's a consultant or a trial exhibit in a criminal  
24 trial, or somebody flung it over the transom, I do think that  
25 document has to be produced. So, to that extent at least, I

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1 don't buy that documents that you have culled don't have to be  
2 produced.

3 MR. CARTER: Your Honor, I think we made clear that we  
4 didn't intend to withhold stuff on that basis.

5 Again, our real problem here is that we are showing  
6 everything on our side.

7 THE COURT: Well, we will talk about timing as we go  
8 forward.

9 MR. CARTER: OK. I mean I want to be clear, your  
10 Honor, the stuff that has been produced already is significant.  
11 You know, there are references to the 302s, there have been  
12 reference to Treasury Department evidentiary memos, for  
13 instance, concerning the IIRO and Wael Jelaidan. Your Honor,  
14 we've actually filed those of record in proceedings before you.

15 THE COURT: Both sides have accused -- well, not both  
16 sides. Some of the defendants' letters suggest that a lot of  
17 what was produced was newspaper clippings and the like.  
18 Whether that's valid or not, I don't know.

19 MR. CARTER: Well, your Honor, there were newspaper  
20 clippings, but we don't believe that the newspaper clippings  
21 weren't subject to production.

22 THE COURT: No, I think that's right.

23 MR. CARTER: And we were trying to sequence this, and  
24 in trying to sequence it, for instance, with WAMY, we went  
25 through and collected all the media publications. We also went

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1 through and collected every congressional hearing we had  
2 relative to the issue of terror sponsorship in which a witness  
3 made a reference to WAMY, and we have collected proceedings  
4 from other courts. So, that stuff has all gone.

5 And we are making a diligent effort to continue this  
6 rolling production, but it's very difficult when it's just not  
7 coming back.

8 THE COURT: And with that in mind, let me turn to  
9 your -- I guess it's your I was going to say March 16 letter.

10 MR. MCMAHON: Your Honor, can I just make two  
11 observations on what you have just gone through?

12 THE COURT: Sure.

13 MR. MCMAHON: One is when they come in with these  
14 responses, do I get a response that says this is all the  
15 material we have on IIROSA's support for the Nigerian Embassy  
16 bombing or something? How detailed is this going to be? I  
17 don't want to come back here and make another application. The  
18 same would go of course for the other clients.

19 THE COURT: Well, I think implicit in anybody's  
20 production is a statement that this is all the material we have  
21 at the moment that's responsive to a particular request. It  
22 may be that somebody flings more documents over the transom  
23 that they then seasonably have to produce to you. But am I  
24 going to require either side to say this is all we have? I  
25 think that is implied in not turning over additional documents.

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1           I would assume that at some point -- you had suggested  
2 it in terms of one of your witnesses -- that at some point  
3 there will be depositions of document custodians to see what  
4 was or wasn't searched. Given the myriad sources that  
5 plaintiffs have utilized, that may be more difficult in terms  
6 of defendants questioning plaintiffs, but I would imagine at  
7 some point plaintiffs are going to want to know what was done  
8 by way of searching files at your end.

9           MR. MCMAHON: Yes, your Honor. We prepared two  
10 separate affidavits for MWL and IIROSA, and they weren't filed  
11 yesterday because, as Mr. Carter reminded me, you want the  
12 whole package simultaneously. That's one of the reasons I was  
13 thinking the first motion to compel should be into the second  
14 motion. And you can see for yourself, your Honor, the  
15 incredible man hours that these people have expended over the  
16 last six or seven years and what's coming down the road --  
17 three million pages from MWL, 6,000 thousand folders, two  
18 million pages from IIROSA. Who is going to pay for the  
19 scanning and copying of all of that.

20           But there are a lot of issues I think you should hear  
21 at a comprehensive motion to compel and definitely read the  
22 affidavits, your Honor. Thank you.

23           MR. CARTER: Your Honor, the affidavits were submitted  
24 pursuant to the briefing schedule for a motion that's not yet  
25 before the court, so they're not a part of this record. And we

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1 received them yesterday, and our preliminary analysis is  
2 ongoing.

3 THE COURT: OK. Well, then maybe there is some merit  
4 to what Mr. McMahon was saying to me about putting off some of  
5 this.

6 One thing I was particularly interested in this was a  
7 representation made that there were going to be certain indices  
8 about what files existed, and it was in the future tense, "to  
9 be provided". Have they now been provided?

10 MR. MCMAHON: Yes, your Honor. At that last  
11 conference, if you recall, you had made a suggestion to me that  
12 it's fine that there is the warehouse there, can you come up  
13 with an index for that. And we have done that. It's long,  
14 it's in Arabic, and I believe we have sent it to Mr. Carter.

15 There is now an index for the Muslim World League,  
16 which is not that long, I think 10 or 12 page, albeit in  
17 Arabic, your Honor. But there is also a website for the Muslim  
18 World League that goes back to 1962, your Honor. I don't know  
19 if you know --

20 THE COURT: They had a website then?

21 MR. MCMAHON: No. The website was created about 18  
22 months ago, but the materials content goes back to 1962. John  
23 Foster Dulles solicited the support of the Saudi Arabian  
24 government to fight Communism and to set up an entity that  
25 would propagate faith, religion, even if it was not Islamic.

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1 That's the nature of the 1962 date.

2 But, yes, your Honor it's been slow -- I apologize --  
3 but I'm dealing with a different culture, and there have just  
4 been enormous problems. But I think once you see what effort  
5 they've put into this production, it's quite something, based  
6 upon the case law I've seen.

7 THE COURT: Well, I am mindful of perhaps what both  
8 sides have said in terms of not really getting deep into the  
9 merits of these arguments until our next session, but the fact  
10 that you have indexed the warehouse, if it doesn't tell them  
11 who and where relevant documents would be, it may not be that  
12 much of a step forward.

13 MR. MCMAHON: Well --

14 THE COURT: They are entitled within reason to have  
15 you segregate documents responsive to reasonable and  
16 particularized requests. Maybe the index does that.

17 MR. MCMAHON: I am hoping, your Honor, that whether  
18 they visit the MWL website, or they look at these indexes, that  
19 they then come back and state precisely that, Mr. McMahon, we  
20 like what you've done, but it doesn't go all the way, and here  
21 are the deficiencies. And then I can deal with that with the  
22 culture I'm involved with.

23 THE COURT: One thing that struck me in everybody's  
24 submissions was -- and maybe it's a function of the time period  
25 we are talking about -- but I don't think I saw a single

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1 reference to electronic materials. And I would imagine that  
2 for at least some of the periods there must be some electronic  
3 files that are on both sides.

4 MR. CARTER: Your Honor, if I could address that and  
5 provide some context. The way that we got to this point with  
6 this motion concerning the Muslim World League and the IIRO is  
7 that we served our document requests, we received numerous  
8 objections to them, and a number of attorneys went down to Mr.  
9 McMahon's office to confer with him on how we could get past  
10 this stuff.

11 At that time the objections that were raised and the  
12 problems that were raised, the predicate for the conversation,  
13 are the same problems are you hearing about today: We have a  
14 lot of stuff, it's very hard to find things, I'm dealing with  
15 another culture, they doesn't fully appreciate the U.S.  
16 litigation process.

17 And through the course of that dialogue what we  
18 attempted to do was identify categories of documents that could  
19 be readily retrieved and produced to the plaintiffs in the  
20 United States as a step of moving the ball forward. That's how  
21 we got to these eight categories of documents, and that's one  
22 of the reasons you don't have specific document requests,  
23 because this was essentially a compromise.

24 And so these documents were the very documents that  
25 were identified as being readily accessible. And we do

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1 reference in there that we want certain electronic, for  
2 instance, lists of recipients.

3 Now, at various times we have been told that there is  
4 no electronic record for these organizations. In an earlier  
5 brief we made the point that one of the documents disclosed to  
6 us included a reference to a search conducted in 1995 of the  
7 IIRO's computer system to determine if they gave aid to a  
8 particular recipient. So, our view is that there is a computer  
9 system and it's existed at least to that time.

10 The indices that we received --

11 THE COURT: Let me interrupt you for a second and ask.  
12 They have proffered a sacrificial lamb in terms of somebody who  
13 they say is knowledgeable about recordkeeping, it sounded like,  
14 worldwide for one of the entities. Why wouldn't you want to  
15 talk to that person?

16 MR. CARTER: Well, the way this involved initially,  
17 your Honor, is that we actually proposed that there may be a  
18 possibility at an appropriate time to do the deposition of a  
19 records custodian. Our understanding is that the individual  
20 who has been most recently identified had resigned. Now that's  
21 our understanding of what we were told by Mr. McMahon at some  
22 point previously. Now he has obviously returned or maybe the  
23 earlier indication was inaccurate. Who knows.

24 THE COURT: Or he may have resigned but still be  
25 available for this purpose.

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1           MR. CARTER: Correct. The difficulty from our  
2 perspective is we are not really interested in learning the  
3 universe or Muslim World League's or IIRO's documents as a  
4 general matter. We have a pretty good handle on that, frankly,  
5 based on the limited discovery we've conducted and our own  
6 investigations. Before we take a deposition of a record  
7 custodian --

8           THE COURT: Forget deposition. I thought Mr. McMahon  
9 was saying come talk to the person, tour an office and see how  
10 the records are kept.

11          MR. MCMAHON: Your Honor, because I saw some case law  
12 to this effect, I think a defendant was sort of lectured by the  
13 court that it's a little late in the game to be doing this.

14          But three years ago we the started this invitation  
15 process specifically because there is some overlap between the  
16 MWL and IIROSA. But there is a New York office, there was a  
17 Virginia office, which the F.B.I. raided, and I'm getting back  
18 all of those documents. So, I thought, gee, the 9/11 lawyers  
19 would want to go to the MWL office to start with. But there is  
20 a London office that is fairly typical of the worldwide  
21 universe. We have offered London, Gibraltar, Madrid, even one  
22 of the countries where the embassy bombings occurred, Tanzania,  
23 I think, with the view you can come in and talk to people here  
24 and maybe get a better understanding of things and narrow  
25 things down. Because I feel it's in the best interests of

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1 getting them what they say they need -- even though I have some  
2 views about this case -- and having our organizations be able  
3 to function for the next two years.

4 THE COURT: But the eight categories -- and I know  
5 there is a dispute as to the extent to which there were or were  
6 not agreements back in October of 2007 -- some of the eight  
7 categories seem to me to be extraordinarily simple in terms of  
8 locating documents.

9 I mean take number 8, I am not sure what time period  
10 we are talking about, but in general give us the org chart is a  
11 pretty straightforward request made in every case of any size.  
12 It's something that most organizations have readily available,  
13 or if it doesn't exist because of the way your clients do  
14 business then the answer would be, sorry, we don't have it.

15 But giving them indices of the whole perhaps worldwide  
16 warehouse doesn't necessarily tell them which file to go fish  
17 in for the org charts, and it seems to me that you sitting down  
18 with your clients, that that at least is something that ought  
19 to be fairly easy to say here it is.

20 MR. MCMAHON: I think so, your Honor. I think we can  
21 narrow our differences on that. For example, that MWL website  
22 I think even has that, but I'm not sure. I just want you to  
23 know, your Honor, at least I have been told -- and we were  
24 shocked at this. I have made six visits to the Kingdom, in  
25 fact held up another visit because of the court hearing -- it's

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1 paper. We were astounded on our first trip. You just have  
2 paper? That's it? And I think Sameer al-Radhi references that  
3 in his affidavit. It was stunning to me.

4 Now, in the IIROSA main headquarters they have a whole  
5 series of computers and things, and they may be able to  
6 download that information, but we take the position, your  
7 Honor, that anything after 2001 is irrelevant, because we  
8 litigated this with Judge Daniels I believe, and he set the  
9 parameters from 1994 to 2001.

10 So, today if there is some electronic material -- and  
11 I think we sent some up recently -- it's to our opinion  
12 irrelevant, your Honor. But it really was astounding to us  
13 that they still do this by paper. That was way back in 2/2 or  
14 2/3 when I made my first visit. But it is hard to believe, but  
15 that's what it is.

16 And Sameer spent an enormous amount of hours coming up  
17 with 6,000 folders, your Honor, that he believes, your Honor,  
18 are responsive to the document request made to the MWL.

19 THE COURT: Is that for the entirety of the document  
20 request or the eight categories?

21 MR. MCMAHON: Oh, no, your Honor. For the entirety of  
22 the request. He's got 6,000 folders, and they are not just  
23 these are all MWL documents. Those are 6,000 folders that have  
24 been culled in terms of matching up the Rule 34 requests. They  
25 had some issues, but I think he has done a good job. So, this

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1 6,000 folders are sitting there, your Honor, and that's why we  
2 went out and got a cost estimate.

3 THE COURT: And these are sitting in Jeddah?

4 MR. MCMAHON: Mecca, but they can be transported to  
5 Jeddah, because I specifically said they may hire a Muslim  
6 lawyer, but I want to be able to represent to the court if they  
7 want to just go to Jeddah, they can certainly go through these  
8 folders. But there are folders that are responsive to the MWL  
9 request, your Honor. This isn't just the MWL universe.

10 MR. CARTER: Your Honor, let me take a few of these  
11 things in turn. The issue as to whether or not we should be  
12 traveling to Jeddah to run through these giant warehouses is  
13 the subject of another soon-to-come motion.

14 We had a meet-and-confer with both counsel for Muslim  
15 World League and WAMY last week, and we weren't able to resolve  
16 our differences. I am hoping when we present the arguments  
17 maybe we will be able to work through it. So, again that's not  
18 on the table today.

19 What we are talking about today is these eight  
20 categories. And the frustration from our perspective is that  
21 we went down, and we tried to work through all of these issues  
22 and find a path that would create momentum for the discovery  
23 process. We identified these very discrete categories of  
24 documents, and now we're back at a hearing years later, and  
25 we're being told you should travel around the world to all of

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1 our offices to see how they work.  
2 Well, you know, the traditional practice in discovery  
3 is that you send your requests, and the other side spends back  
4 the responsive documents. Some of the stuff we have seen  
5 produced to us thus far gives us tremendous pause about going  
6 to any of the offices, because what we get are salutary letters  
7 thanking the IIRO and Muslim World League for digging a well.  
8 And it's specifically that kind of stuff we've said we don't  
9 want; We are not interested in that.

10 THE COURT: Putting aside the obvious strength of  
11 views on both sides in this case, it's been my experience that  
12 when you are dealing with foreign discovery in any case, even  
13 it's the manufacturer of widgets, getting the very sorts of  
14 information that you seek is difficult just because of cultural  
15 differences. And it sounds like Mr. McMahon has done this to  
16 some extent, but usually out of frustration I have ended up  
17 directing the person in Mr. McMahon's position to go and sit  
18 down and sort of walk people through the files and do the types  
19 of things that an associate would do in this country, dispatch  
20 to somebody's warehouse in Iowa. And we may get to that. I  
21 hear what you are saying about the eight categories.

22 MR. CARTER: And, again, I think we want to focus on  
23 the eight categories, because everything else is not before the  
24 court. You know, when we start talking about the indices, the  
25 indices have 100,000 cells, so there is 100,000 entries in

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1 effect. We actually received four indices, and after analyzing  
2 them we realized that they had given us duplicates, so that  
3 there really only were two. You know, looking at those two,  
4 again you are left with 100,000 cells, and a lot of them just  
5 say things like "relief" or "health". That is not helpful.

6 Now, there are some where the categories are  
7 sufficiently specific, and we are only talking about two or  
8 three words that enable us to identify them as being of  
9 particular interest.

10 But our view was if we could start with these eight  
11 categories. You know, the next focus frankly is on documents  
12 pertaining to a gentleman named al-Mujio, who is designated by  
13 the U.S. Government and directed one of the IIRO offices in  
14 Saudi Arabia; the file for Mohammed Jamal Khalifa, who is  
15 alleged to have been a founding member of al Qaeda. This is  
16 pretty dead-on focused stuff that we're trying to get to, and  
17 to get to it we don't want to run through a bunch of warehouses  
18 everywhere.

19 THE COURT: One of the problems is, it seems to me --  
20 and that's why I picked on item 8, the org charts first -- if I  
21 take something at the other end of your list, list of  
22 recipients of aid, Mr. McMahon said in his letter that there is  
23 18,000 orphans who got aid. And I assume you are less  
24 interested in orphans than projects.

25 MR. CARTER: Your Honor, I think that's accurate. The  
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1 issue though, the way we arrived at a request for recipients of  
2 aid was because Mr. McMahon told us at the meeting that the  
3 IIRO and the Muslim World League keep these impeccable records  
4 of everyone who has ever received aid, and they can document  
5 every single person. And that led us to the simple solution,  
6 well, if you can generate a list of the recipients, send it to  
7 us, and at that point we can say we are interested in these  
8 projects only, throw the rest of them away.

9 And so I know in a vacuum it's difficult to understand  
10 how we got to that, but it was as a result of the conversation.

11 THE COURT: What time period -- just to stick with  
12 recipients of aid, for example -- were you requesting it for?  
13 '94 through when?

14 MR. CARTER: Your Honor, I should clarify that. Judge  
15 Daniels' ruling was actually that discovery would go back to  
16 1992. He did not address whether or not -- and it hasn't been  
17 briefed -- as to whether or not the period of discovery should  
18 extend past September 11, 2001.

19 THE COURT: That's why I was asking you, because I  
20 knew there was a start date in one of those decisions; I didn't  
21 have a recollection of an end date.

22 MR. CARTER: No, I think when we served these many,  
23 many years ago, we went through the present, part of the logic  
24 of that being some of the most important evidence may actually  
25 be from the period post 9/11, for instance when these

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1 organizations were being implicated in terrorism and logically  
2 would have taken steps to identify people who were problems and  
3 maybe taken action against those people. So, cutting it off at  
4 September 11, 2001 doesn't make a tremendous amount of sense.  
5 We are willing to deal with a reasonable period after. It's  
6 just not something that we've discussed yet.

7 THE COURT: And notwithstanding what you said about  
8 the 6,000 folders and the indices, Mr. McMahon, and subject to  
9 some decision about the end date, what's so hard about  
10 producing a list of recipients of aid?

11 MR. MCMAHON: Your Honor, I'm going to stand up to  
12 clarify something. There's 40,000 kids in Africa alone who are  
13 receiving aid, as Sameer -- Mr. al-Radhi has corrected me.

14 THE COURT: Directly?

15 MR. MCMAHON: The way they receive aid, your Honor,  
16 it's maybe a remote village in northern Africa, the woman shows  
17 up, has her fingerprint, the kid shows up with a fingerprint,  
18 and they get two bucks a month I think for that. That's how it  
19 comes out.

20 THE COURT: And how is that booked on the books of MWL  
21 or IIRO? Is it village A got \$20,000? Or is it Abdul got \$2  
22 with this person he came with?

23 MR. MCMAHON: I appreciate your insight, your Honor,  
24 trust me. First of all, MWL is the organization up here that  
25 was created in '62.

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1                   THE COURT: OK.  
2                   MR. MCMAHON: I forget how many years later there was  
3 a decision made, you know, to actually implement aid we have to  
4 set up another arm which will deal with building wells, going  
5 to people who have suffered in typhoons or whatever, emergency  
6 health care, things like that, and that's IIRO. So, there  
7 would be IIRO records which I personally looked at in Jeddah,  
8 quite comprehensive. But I can try to get the names of 40,000  
9 orphans.

10                  THE COURT: Does MWL make direct grants to anybody, or  
11 is everything funneled through?

12                  MR. MCMAHON: No, I believe everything is funneled  
13 through IIROSA, your Honor, in terms of the issues that they  
14 are looking at. MWL gets its money from the Kingdom, but they  
15 don't do I think the orphans.

16                  The theory of the plaintiffs, I believe, is that cash  
17 can leak out of this system. I have looked at the system, and  
18 I used to be with the Securities Investor Protection  
19 Corporation, your Honor, and I tracked money laundering all the  
20 time. And I surprised them with my request to review the  
21 records. No hesitation to do that.

22                  So, it's only IIROSA, I think. And it really is  
23 financial records. These guys want to see whether IIROSA has  
24 links to -- for example, did IIROSA send money over to America  
25 so that conspirator number 5 got flying lessons in Denver or

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1 something. I think that's where they're going.  
2 THE COURT: Well, that's I would assume part of it.  
3 They're probably not going to be able to look behind each and  
4 every individual who got his, as you said, \$2, but I would  
5 imagine they would be interested in large payments either  
6 because of where they go or when they go or whatever.

7 MR. MCMAHON: Your Honor, I think it's going to be  
8 very helpful. I'm somewhat remiss here. This is my fourth  
9 production. We have had Ashton, Burnett. We had the Treasury  
10 Department, OFAC, Office of Foreign Assets Control, and now we  
11 have federal. There are a lot of documents floating around the  
12 office, and I just recently got a handle on them. I gave them  
13 to Mr. Carter as a result of our last communication. But I  
14 think categories 1 and 2, annual report and the financial  
15 statements, do not pose an issue for us, and I have told that  
16 to Mr. Carter. 8 does not pose an issue. And some of the  
17 others I think overlap. But one of the reasons I deferred the  
18 trip to Saudi was to get a better handle on things.

19 For example, on the 6,000 folders of the Muslim World  
20 League, can I get some way to identify all the folders that are  
21 financial, which they are looking for? I think that's my job.  
22 That's a task down the road.

23 THE COURT: Just out of curiosity, when you deal with  
24 these folks in Saudi Arabia, do they speak English or are you  
25 dealing through a translator?

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1 MR. MCMAHON: Sameer is pretty good, your Honor. But  
2 when I deal with the MWL folks from Mecca and they come into  
3 Jeddah, one of them speaks English but not very well. And I  
4 have noticed in some of my e-mails with Sameer that there has  
5 been a misapprehension on something, and we tried to correct  
6 it. And sometimes we even talk on Skype. I promised him I  
7 would be Skyping him tomorrow after our session today. So, I  
8 will indeed ask him about the MWL records of 6,000 folders, is  
9 there a category there for financials.

10                   THE COURT: Let me go back to Mr. Carter, since there  
11 seems to be a consensus that a lot of this should be the  
12 subject of our next session. Tell me what you want me to deal  
13 with today, if anything.

14 MR. CARTER: Your Honor, when I look at the response  
15 that was filed, for, say, five of the eight categories there is  
16 an agreement they should be produced. So, you know, we think  
17 that those documents should be produced now because we have  
18 been waiting for them for a long time.

19 You know, now there is an argument in there that we  
20 can't possibly give you financial reports from the field  
21 offices because they are not submitted back to the  
22 headquarters.

23 THE COURT: Which is contrary to the materials you  
24 gave me.

25 MR. CARTER: Right. And so those do exist, and we do  
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1 want those periodic financial reports.

2 Again, this is a very, you know, confusing  
3 circumstance because we went, we spent all the time to meet and  
4 confer, we came up with these categories, we sent a letter back  
5 in 2008. There has never been an indication that there is an  
6 inability to comply with it, and we are essentially hitting the  
7 restart button again today much later.

8 So, I think all we want to addressed to is the eight  
9 categories and have an order entered that those should be  
10 produced.

11 THE COURT: Well, I am looking at Mr. McMahon's letter  
12 and category 7, which is summaries of disbursements, which I  
13 guess is a CliffsNotes view or a macro view of what is going on  
14 in these organizations. It says will be produced Washington  
15 D.C. or Jeddah, depending on the timeframe, see attached annual  
16 reports. I'm not sure I had any attached annual reports. But  
17 it would seem to me if these are summaries of disbursements,  
18 Mr. McMahon, they can't be voluminous, and it ought to be  
19 fairly simple to produce them if not forthwith then pretty  
20 chose to forthwith rather than in Jeddah.

21 MR. MCMAHON: No, I checked the annual reports, your  
22 Honor, and it is in there in detail, the expenditures. So  
23 after reviewing those -- and I have different years. I have to  
24 get them all together -- I don't see any problem with that,  
25 your Honor; it's part of the annual report. And they are

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1 audited I think now by KPMG, but there are audited financials  
2 too, which I sent I think four up.

3 THE COURT: And you also say that you are going to  
4 produce org charts. But there is the issue where you have said  
5 that there is no reporting up. And there seem to be a host of  
6 documents that suggest the contrary.

7 MR. MCMAHON: Yes, your Honor. I was mistaken in  
8 that. And I will you frankly, this is the most extraordinary  
9 case I have ever had to defend, and I have never been in a case  
10 with so many issues. But I think that was my fault, your  
11 Honor. Again, it stems from this production. We have had to  
12 produce stuff for different plaintiffs and the Treasury  
13 Department. So I think that is part of that is for me. And  
14 Sameer is trying to -- well, as I said, I'm going to be Skyping  
15 him tomorrow to get clarification on that issue.

16 THE COURT: Well.

17 MR. CARTER: Your Honor, if I --

18 THE COURT: Please.

19 MR. CARTER: You know, one of the points of confusion  
20 I think here is that we're several years into this with the  
21 Muslim World League and IIRO, and Mr. McMahon is presenting an  
22 argument that there are no reports up from the field offices to  
23 the headquarters, and then withdrawing that when we point out  
24 the documents that have been produced.

25 There was an indication today that the Muslim World

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1 League does not engage in any direct grants of aid. The  
2 documents previously produced by the Muslim World League very  
3 much indicate that it does give aid directly and engages in  
4 operational activities on its own independent of the IIRO.

5 So, we are so far along in the process, and there  
6 seems to be a lack of understanding of the organizations, and  
7 as a consequence we have no confidence that what is coming back  
8 to us is complete.

9 What we see when we raise an issue is a production of  
10 a limited amount of documentation which doesn't represent the  
11 complete universe but something sort of intended to appease us.  
12 And what we really want is to get going, and that's it.

13 THE COURT: And what are you suggesting I do other  
14 than say produce these eight categories or copies of the  
15 materials responsive to these eight categories in the United  
16 States in short order?

17 MR. CARTER: Nothing further than that, your Honor.  
18 Beyond that, you know, we focused, given the timeframe that's  
19 available for us to conduct discovery, and that's why we have  
20 another motion that we served on Mr. McMahon which focuses very  
21 much on the activities of an individual in Saudi Arabia who had  
22 control over purse strings and has designated a person in the  
23 Philippines who is Osama bin Laden's brother-in-law and has  
24 been listed as a terror financier and supporter.

25 One other thing I should mention, there is an effort

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1 to categorize this as being only about financial transactions.  
2 And that's not the case. In many circumstances what you really  
3 have is these organizations in our view facilitating the  
4 movement of members of al Qaeda by giving them false  
5 credentials so they can enter into Afghanistan, for instance,  
6 and get to an al Qaeda camp. And when you look at the  
7 Department of Defense summaries for the Gitmo people, you have  
8 witness who say I was at this al Farouq camp, an al Qaeda  
9 training camp, I was an employee of the IIRO.

10 So, it's not just about money; it's about other  
11 topics; and we are trying to focus in on all of those. But I  
12 just want to disabuse the idea that if we just get some  
13 financial transactions we would be done.

14 MR. MCMAHON: Your Honor, I think we have given you  
15 all the Jamal Khalifa files, just on our last production. We  
16 gave you whatever we have.

17 You are focusing on Wael Jelaidan, but IIROSA has  
18 nothing to do with Wael Jelaidan. The problem, your Honor, is  
19 sometimes these offices are overlaid and they share offices.

20 THE COURT: I have been told by MWL and IIRO. How  
21 does Wael Jelaidan fit in with those two?

22 MR. MCMAHON: He thinks IIROSA is the employer of Wael  
23 Jelaidan, which is not the case.

24 Wael Jelaidan, your Honor, was very important in  
25 Afghanistan. He headed up the refugee mission, and he got to  
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1 know, among other things, Osama bin Laden very well, but that's  
2 what his job was. So much of this case goes back to -- and  
3 it's in their papers, your Honor -- goes back to Afghanistan,  
4 the occupation, when the CIA and the Saudi intelligence were  
5 one-on-one and were getting stingers missiles to the Mujahideen  
6 to get rid of the Russians. That's what is another theme in  
7 the disclosures, your Honor. But Wael Jelaidan only features  
8 in that he is an individual defendant and he did have, I  
9 believe -- well, he had a relationship with an entity called  
10 the Rabita Trust, your Honor, which is in jurisdictional  
11 discovery; it's not up for anything today. He was the  
12 executive director of the Rabita Trust.

13 THE COURT: Well, tell me why I shouldn't -- let me go  
14 back a step. You indicated that you have postponed a trip to  
15 the Kingdom for purposes of this conference, and I gather you  
16 will be going there soon. Why shouldn't I say that the  
17 documents responsive -- and I think we need to fix an end  
18 date -- but the documents responsive to categories 1 through 8  
19 have to be produced within three weeks in the United States?

20 MR. MCMAHON: Well, I could probably use the other  
21 week, your Honor. It's not going to matter I think to them, so  
22 I would ask for four weeks, your Honor. I think that's what  
23 they asked for, 30 days, or maybe that was your second motion  
24 to compel. I think you asked for production in 30 days.

25 MR. CARTER: I think it says 20, your Honor, but...

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1           THE COURT: It does. Well, 20 or 30 is not a big  
2 difference. Suppose I say 30 days but direct that the  
3 documents responsive to those eight categories through 2004 --

4           MR. CARTER: That's fine.

5           THE COURT: -- '92 through 2004 be produced in the  
6 United States within 30 days.

7           MR. MCMAHON: Your Honor, could you just put on the  
8 record why we're moving off? I'm not sure, and I don't want to  
9 misspeak, but I thought it was 2001 or December of 2001 when  
10 the cut-off date was. I haven't gone back and looked.

11          THE COURT: OK. I remembered there was -- maybe I  
12 have it with me -- it may have been an exhibit somebody gave  
13 me. I remember Judge Daniels' order saying that the start date  
14 was I thought '94. It may be '92. We will go back through the  
15 file and whatever it is, it is.

16          If Judge Daniels set some other date, and you convince  
17 me of that, I will shorten the period. But failing that, it  
18 seems to me the end of 2004 is a reasonable cut-off. It should  
19 get easier to produce it the closer we get to 2011 both in  
20 terms of hopefully electronic systems and just in terms of  
21 accessibility.

22          MR. MCMAHON: I just don't think there are any  
23 allegations in the complaint that bear on that, your Honor.  
24 Basically they allege that you take the World Trade Center and  
25 then you go back to say the 1996 Khobar Towers bombing or

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1 something.

2 THE COURT: But it's reasonable to look at is there a  
3 sudden change in the way disbursements are made such that it  
4 shows either a cover-up after the fact or sheds light on  
5 something that was unusual about the earlier disbursements.  
6 So, I don't think a snapshot rather than sort of a continuum is  
7 appropriate. People can argue about when the period ought to  
8 end. Feel free to send me a letter that tells me that Judge  
9 Daniels has already ruled on this, and if he has, I will modify  
10 it. If you want to send me a letter telling me why it should  
11 end significantly before 2004, I will read it, and any response  
12 I get from plaintiffs, but I'm likely not to change that  
13 period.

14 MR. MCMAHON: I understand, your Honor. I just  
15 thought that was Judge Daniels' call, that's all.

16 THE COURT: If he has made it --

17 MR. MCMAHON: No, any subsequent calls. If he is  
18 going to change the timeframe, I thought that's in his  
19 bailiwick, not yours, but...

20 THE COURT: No. The only reason I'm saying if he  
21 set -- and I know he did set a date -- whether it's '92 or '94,  
22 I don't remember as I sit here -- I'm not going to contravene  
23 that. If he didn't set a date, trust me if he is asked, he is  
24 not going to be upset with me setting a date. And in fact I  
25 assume if I were to reconsider based on new facts and say the

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1 date should start in '89, I don't believe, unless he thinks I'm  
2 clearly erroneous, he is going to change that. I am just  
3 saying if he or I decided what the start date is, I don't want  
4 to keep revisiting the same issues.

5 MR. MCMAHON: I understand, your Honor. Thank you.

6 MR. CARTER: Your Honor, I am actually looking at  
7 Judge Daniels' order concerning the timeframe issue, and it  
8 sets '92 as the early date, presumptive early date and it  
9 doesn't set a terminal date.

10 THE COURT: OK.

11 MR. CARTER: The order was issued on December 21,  
12 2004.

13 THE COURT: Do you have you the docket entry number at  
14 the top?

15 MR. CARTER: I'm sorry, 2007. There is no docket  
16 entry. But it is Exhibit E, your Honor, to our April 7 letter.

17 THE COURT: Oh, right, I knew I read it somewhere.

18 MR. CARTER: So, it's there.

19 With regard to the latter period in 2004, just as one  
20 example, your Honor, the Treasury Department evidentiary memo  
21 supporting the designation of the IIRO includes language  
22 stating that the IIRO's sponsorship of terrorism continued at  
23 least through the first half of 2006. So, there is information  
24 of record to justify this later period.

25 You mentioned also, you raised an inquiry about why

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1 Wael Jelaidan might fit into all of this, and Mr. McMahon  
2 suggested that he has nothing to do with the Muslim World  
3 League or the IIRO. Wael Jelaidan's CV -- which is one of the  
4 only things he's produced to us -- indicates he was the  
5 director of the Muslim World League, one of its officers, for a  
6 period of many years. So, it is our understanding that the  
7 office in question was a joint Muslim World League/IIRO office,  
8 that in the capacity as that director he had the ability to  
9 issue papers to purported relief workers; and Jamal al-Fadl had  
10 testified before federal agents that Jelaidan did in fact  
11 provide humanitarian papers from the IIRO for al Qaeda people.  
12 So, that's sort of how he fits into this mess.

13 THE COURT: Shall we move on to the WAMY request  
14 letter? Mr. Mohammedi, the letter of March 3, I guess, was the  
15 start of that chain.

16 MR. MOHAMMEDI: Yes, your Honor, we have eight issues  
17 before this court now. The first one we believe that  
18 plaintiffs' continued argument of discovery given that it was  
19 rejected --

20 THE COURT: I'm sorry, I am having trouble hearing.

21 MR. MOHAMMEDI: I said plaintiff is using the argument  
22 of federal discovery in a way they want to extend the evidence  
23 before they produce the documents. And we are having a hard  
24 time understanding the rationale. We don't believe this is a  
25 valid objection. This is the first objection that they have

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1 which is a general objection.

2 Now, the second objection that they have, in all their  
3 general objections what they keep saying is all our requests,  
4 including document requests, are contention interrogatories.  
5 They have not been specific to the specific request that they  
6 think are contention interrogatories. And your Honor  
7 specifically mentioned that you cannot make a decision based on  
8 abstract. And their objection is general objections, not  
9 specific objections to specific document requests or  
10 interrogatories.

11 We do believe that WAMY and WAMY International need  
12 proof, and so far we believe plaintiff has produced mostly  
13 newspaper clippings. We just believe that the plaintiff, if it  
14 believes that there is no document available to them, they just  
15 need to say so. However, most of their responses are very  
16 vague responses and with general objections such as contention  
17 discovery requests.

18 One important issue that they mentioned also is that  
19 they keep making more allegations about WAMY, actually Muslim  
20 World League being the parent company for WAMY, yet we have not  
21 received one single document from them demonstrating that. And  
22 we made the request specifically to those, and we have not  
23 received anything about that.

24 Now, the third issue that we would like to address is  
25 the privilege. They have not produced one single document

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1 showing a privilege log. Most of their argument is the fact  
2 that they are claiming that there is some document that came  
3 into possession and they deem them to be privilege documents.  
4 So, for us to see if those are privilege documents, we would  
5 like to receive a privilege log. And they make the argument  
6 that WAMY made the same objection. But we did produce the  
7 privilege document.

8 The other issue that we would like to address is the  
9 protective order whereby they are stating that they would  
10 withhold documents and identities of witnesses because they're  
11 afraid for their safety. We do believe that if they do have an  
12 issue with safety, the proper approach is to produce or to file  
13 a motion for a protective order. And there is a protective  
14 order in place as we speak, where Judge Casey had that approved  
15 when we were negotiating between plaintiff and defendants.

16 Now, the other issue that I would like to address is  
17 issue number 5 and objections to WAMY's interrogatories 4  
18 through 12. What they keep mentioning, they keep referring to  
19 RICO statements.

20 THE COURT: To what statements? I'm sorry.

21 MR. MOHAMMEDI: RICO statements. We do believe that  
22 Federal Rules of Civil Procedure, Rule 33, really a party has  
23 to answer interrogatories, specifically to the specific request  
24 of that interrogatory, not to mention or to refer to documents.  
25 And most of those responses are referring to documents to RICO

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1 statements.

2 Now, the other issue that we would like to address is  
3 issue number 6. And I think this one you have already made a  
4 ruling on it. We do believe that fact witnesses, they have to  
5 produce them. The identity of fact witnesses, I think they  
6 have to produce those witnesses if they have direct knowledge  
7 of the facts of the case. We are not asking them to produce  
8 documents of people who they are not calling for trial, but any  
9 fact witnesses.

10 THE COURT: When you say produce, you mean identify.

11 MR. MOHAMMEDI: Identify, yes. And that was in  
12 response to our interrogatory number 1.

13 Now, if you go to issue number 7, would it be possible  
14 with the plaintiffs' production --

15 THE COURT: Wait. Let me go back to interrogatory 1.  
16 That's not asking who has knowledge of the facts. That's  
17 asking who did you ask for information that relates to all the  
18 other interrogatory answers.

19 MR. MOHAMMEDI: If they are related to facts, we  
20 believe that they should be produced.

21 THE COURT: OK. I'm sorry to interrupt. Go on to  
22 number 7.

23 MR. MOHAMMEDI: Number 7 is plaintiff produced 1,072  
24 pages of documents on WAMY. They also claim they produced  
25 7,000 pages through Muslim World League which they claimed that

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1 Muslim World League is part of the company. We don't have the  
2 7,000 pages. However, the problem we have, even the 1,072  
3 pages, which we state the fact that they are mostly newspaper  
4 clippings, they have not stated specifically which document  
5 corresponds to which request.

6 Now, plaintiff I believe they make the arguments that  
7 because WAMY's requests were broad, they had to dump documents  
8 with WAMY as a response. I will give your Honor a few  
9 examples.

10 WAMY made a request where they ask specifically how  
11 WAMY uses its funds to sponsor terrorist activities. In  
12 request 75 specifically it requests that plaintiff show any  
13 knowledge that WAMY had that its actions were aiding and  
14 abetting al Qaeda. And they made the argument also that  
15 WAMY -- which is not before this court but I just want to  
16 clarify the record -- that WAMY are doing the same thing.

17 As a matter of fact, discovery just started, and we  
18 specifically had a conference with them, and we told them that  
19 we have specific index that relate to specific requests for  
20 them to review and then we'll produce these documents. That's  
21 issue number 7.

22 Issue number 8 relates to service. We do believe that  
23 there was no decision made by Judge Daniels on the service  
24 issue related to WAMY. And he was very specific.

25 THE COURT: Let me cut you short on that one. I have  
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1 read the opposing papers, and as to documents that relate to  
2 service I'm firmly convinced that one side is right, I just  
3 don't know which side is right, but I'm also convinced that the  
4 documents are not voluminous, so as to documents evidencing or  
5 relating to service I'm going to direct that those be produced.  
6 Who wants to speak to the other issues?

7 Before you do that, we are dealing with a handful of  
8 the parties who are in merits discovery now, but two thoughts I  
9 had as folks were talking. The first is I don't believe there  
10 is a Rule 502 order in this case relating to the production of  
11 privileged documents inadvertently or advertently. And just  
12 anticipating issues down the road, if we get to voluminous  
13 productions, I wonder whether it's not useful for me sua sponte  
14 to simply enter a Rule 502 order.

15 MR. CARTER: Your Honor, I think the court raised that  
16 possibility in one of the earlier hearings concerning defendant  
17 Barzinji, and we were receptive to the idea.

18 THE COURT: OK. I had forgotten I had done that, but  
19 I will probably then do that in fairly short order. And it  
20 won't relate simply to inadvertent production; it will be  
21 production. Because otherwise you get into -- and I may have  
22 said it the last time -- battles about was it inadvertent or  
23 advertent, and I don't think those are worth worrying about.

24 The other is what Mr. Mohammedi was just talking  
25 about, which is giving documents to defendant A but not

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1 defendant B and assuming that they will find their way to  
2 everybody. There really is no arrangement on either side, or  
3 as a practical matter there probably is on the plaintiffs'  
4 side, for some sort of centralized document repository here,  
5 correct?

6 MR. CARTER: There is not an arrangement for a  
7 centralized document repository. The procedure that had been  
8 implemented years ago is for the plaintiffs to copy on any  
9 productions Mr. Kabat who was serving in a capacity as liaison  
10 counsel for the Defendants' Executive Committee, and that was  
11 intended to be the vehicle for ensuring everybody received all  
12 the documents.

13 THE COURT: And that's what is continuing to happen?  
14 You are giving him a disk or something?

15 MR. CARTER: That is what is continuing to happen.  
16 And, you know, I think the gap here is simply because merits  
17 discovery was ongoing as to the Muslim World League and not as  
18 to WAMY, and so there was probably a less interest on the part  
19 of defendants in collecting discovery when their motions were  
20 pending. But it's not a problem for us to produce the stuff  
21 that we have produced previously.

22 MR. MOHAMMEDI: Your Honor, the issue is not only the  
23 fact that there are 5,000 I believe you mentioned, 5,000  
24 documents that were supposed to review them and they are  
25 related to WAMY. We really do believe that for a response

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1 document they have to be corresponding to our requests  
2 specifically.

3 THE COURT: OK. Well, you had seven or eight I guess  
4 issues. Let me hear from Mr. Carter.

5 MR. CARTER: Your Honor --

6 THE COURT: Let me just interrupt you and go off the  
7 record for a second.

8 MR. CARTER: Your Honor, I think potentially we can  
9 take one issue off the table right away with regard to the  
10 reference made to procedures for privilege logs.

11 We had lengthy meet-and-confers two weeks ago with  
12 counsel for Dubai Islamic Bank and then a general session, and  
13 where we left was there was going to be a proposal submitted to  
14 plaintiffs about how we were going to approach privilege log  
15 issues. So, we are waiting for that proposal, and then we will  
16 see if we can work out something on a collective basis about  
17 that.

18 With regard to the issues concerning identifying  
19 witnesses, I think that the court has effectively dealt with  
20 that through the requirement issued earlier in the context of  
21 the Muslim World League's 26(a) motion.

22 Part of the issue here though is that the focus of  
23 this motion was in part on identifying consultants who are not  
24 expected to testify. There is no real reason for the identity  
25 of those folks to be disclosed. And this is one of those

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1 unique cases where there are actually some reasons to have  
2 concern. Putting aside safety, you also have the issue of the  
3 problem of liable tourism which has affected folks who work in  
4 this area and comment about terrorism and terrorism  
5 sponsorship. So, we just don't see a basis for there having  
6 any necessity to identify those folks.

7 With regard to the protective order --

8 THE COURT: Well, and I'm not sure they fall within  
9 26(a)(1), which talks about each individual likely to have  
10 discoverable information which a consultant would be. Well, I  
11 guess it's arguable. But I think you're right that my  
12 modification or supplementation of what you need to produce  
13 should deal with that issue.

14 Just so the record is clear, I'm not sure I've said  
15 it, but non-testifying consultants to my mind need not be  
16 identified.

17 MR. CARTER: Thank you, your Honor. You know, more  
18 broadly, when we sort of look at this motion, again one of the  
19 difficulties is that WAMY is essentially urging this court to  
20 require plaintiffs to produce everything immediately; and we  
21 haven't received a single document from WAMY Saudi Arabia. And  
22 I think a lot of these concerns, objections, all fall by the  
23 wayside once we have made our complete production. There is a  
24 concern Mr. Mohammedi has expressed about the production  
25 consists of newspapers. Well, it's a rolling production. It

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1 wasn't just newspapers; it was other things.

2 THE COURT: I understand there is a bit of  
3 gamesmanship or brinkmanship here but ultimately -- perhaps not  
4 with any defendant who is here today -- you may get to the  
5 juncture where defendant X has requested documents from you and  
6 yet is not playing fairly in the sense that they haven't  
7 produced anything. But I don't think I can operate on the  
8 principle that two wrongs make a right.

9 It may be that you are in the position of producing  
10 documents as the way of being able to say either direct that  
11 they produce documents that they should have produced and  
12 haven't produced or strike their answer or do something  
13 Draconian.

14 So, I don't think in each instance you can say until  
15 they give us a commensurate number of documents we're sort of  
16 slowing up what we're producing or giving them the less  
17 important stuff first or anything like that.

18 MR. CARTER: I don't think that's what I intended to  
19 say, your Honor. My point is more that we have already made an  
20 initial production, and, you know, on the defendant's side they  
21 are saying let's be realistic about this, it's going to take  
22 some time.

23 And we have to go through that process too, and it's a  
24 rolling production, and some of the concerns that are being  
25 raised simply start to fall away as that production continues.

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1           THE COURT: Let me also say that -- and I think I have  
2 said it before -- generally speaking I view general objections  
3 as surplusage. There is a decision by magistrate Judge Grimm  
4 in Maryland. It may be the Mancia, M-a-n-c-i-a, decision; it  
5 may be one of his other decisions; but he makes the point quite  
6 forcibly that general objections rather than objections that  
7 are tailored to specific requests are not worth the paper  
8 they're written on. And that pretty much is my view.

9           So, to the extent there were concerns about  
10 withholding of documents based on general objections, I don't  
11 view a general objection as a basis for withholding documents.  
12 I understand that in your letter there were some explanations  
13 for why that was done, but I just thought I would make that  
14 point clear.

15          MR. CARTER: Your Honor, it is one of those things  
16 that both sides have included general objections.

17          THE COURT: Lawyers -- you know, that seems to be part  
18 of what must go on in every case. I guess there is some manual  
19 that says that. And the other is that -- and it certainly  
20 happened in this case -- everybody quotes to me the number of  
21 documents the other side has produced, and the fact that one  
22 side has produced a thousand documents and the other a million,  
23 people assume that has some significance. But there is always  
24 the possibility that one side only has 1,000 documents and the  
25 other side has millions of documents. So, the number of

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1 documents, unless it's disproportionate to what seems ought to  
2 exist, really doesn't move me one way or the other.

3 MR. CARTER: Your Honor, on that point there was a  
4 suggestion that we're engaged in some attempt to manufacture a  
5 document dump. That's not happening. I would say in the first  
6 instance that any documents that we have necessarily relate on  
7 some level to the claims advanced in the litigation. It's not  
8 as though we just collected every article in the world that  
9 said WAMY's name and sent it back to them. That's not what  
10 happened.

11 The concern with referenced with regard to specific  
12 requests or interrogatories I think is driven by a disconnect  
13 between the plaintiffs and certain of the defendants about  
14 certain of the substantive standards.

15 So, for instance, when there is a request that says  
16 any documents that support your claim that this organization  
17 aided and abetted the September 11 attacks, the plaintiffs'  
18 view, based on our reading of the law, is that general support  
19 provided to al Qaeda served to facilitate the organization's  
20 ability to carry out the attacks. So, a broad discovery  
21 request for any documents that you may use to support the claim  
22 that this organization supported in any way the September 11  
23 attacks gets all the documents. But we did with respect to all  
24 of the more narrowly tailored requests identify very  
25 specifically.

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1           THE COURT: Let's stick with the one you just  
2 described. And is your planned response to that to provide all  
3 the documents that you think are responsive even though it's  
4 voluminous?

5           MR. CARTER: Yes.

6           THE COURT: OK. And that's what we have begun the  
7 process of doing. And of course we're not producing our  
8 internal written memos, those kinds of things. But that feeds  
9 into what Mr. Mohammedi said about providing a response which  
10 indicates which documents support which request.

11          MR. CARTER: Correct, your Honor. And there are  
12 certain requests that are more specific and narrowly tailored,  
13 and with regard to those we can cull from the broader universe,  
14 and we have, and we have identified those limited documents  
15 that speak to a particular issue.

16          THE COURT: OK. So, for example, if it said any  
17 disbursements that WAMY made to terrorists, if you had such  
18 documents you would reference a narrow group of documents.

19          MR. CARTER: That would be a narrow group.

20          THE COURT: OK, go on.

21          One thing I'm not clear on is generally speaking there  
22 is a local rule which at the outset of discovery -- and  
23 notwithstanding the age of the case, we are at the outset of  
24 discovery in most instances -- limits what are permissible  
25 interrogatories. And I'm not sure whether there were other

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1 understandings that were reached along the way, or what the  
2 circumstance is.

3 MR. CARTER: There were not, your Honor. Many, many  
4 years ago Judge Casey during a conference indicated that he  
5 didn't necessarily intend to adhere strictly to the local rules  
6 particularly with regard to interrogatories. And you know, it  
7 really has sort of mushroomed from there sort of beyond what I  
8 think everyone expected at the time.

9 I don't know of any order that's actually written on  
10 that point.

11 THE COURT: And have plaintiffs served interrogatories  
12 to which there have been responses also?

13 MR. CARTER: I believe we may have served  
14 interrogatories on al Haramain, but that was also subject to an  
15 agreement that had been reached, and it was when the case was  
16 in D.C. I do not recall having served interrogatories at all  
17 since.

18 THE COURT: Well, what I am inclined to do -- and  
19 maybe since we don't have everybody at this conference, since I  
20 presume they will read the transcript of this conference -- is  
21 discuss at our next conference whether in fact interrogatories  
22 should be limited to those which the local rule contemplates at  
23 the outset of discovery.

24 I'm not a big fan of interrogatories. Folks think  
25 that as between a particular defendant and plaintiff that

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1 interrogatories move the ball forward. I'm certainly not going  
2 to get into the middle of that, but I would like to get the  
3 show on the road, and I think interrogatories, in particular  
4 contention interrogatories, or interrogatories that say what  
5 interrogatories support contention 3, are not useful at this  
6 point.

7 So, what I am inclined to do is say except to the  
8 extent the parties otherwise agree, or there is some particular  
9 circumstance that causes me to otherwise correct direct,  
10 interrogatories will be limited to those very narrow topics  
11 that are within the local rule.

12 So, on the defense side you should make that known  
13 that that's something I plan to take up next time.

14 MR. CARTER: I think we may have hit on everything,  
15 your Honor. I could be mistaken.

16 THE COURT: One thing I wanted to make clear -- and I  
17 think I have said in part already -- a request that says "give  
18 us all the documents that you contend supports a particular  
19 paragraph of the complaint" may implicate work product or  
20 privilege, but if it's something more directed to subject  
21 matter, such as "give us all the disbursements between A and B  
22 or whatever," even if it's something that counsel obtained  
23 rather than their clients, I do think it has to be produced.

24 (Continued on next page)

25 THE COURT: I guess I did say that already. I want to  
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1 make sure I cover the universe here.

2 There is also, on page 5, plaintiff's  
3 March 18th letter, a statement that says, in part: Plaintiff's  
4 are not evoking these privileges, namely work product and  
5 attorney/client on a wholesale basis in an effort to avoid  
6 production. Plaintiffs have merely raised the objection to  
7 preserve the privilege in producing documents in good faith.

8 THE COURT: I'm not sure I have any idea what that  
9 means.

10 MR. CARTER: Your Honor, I think we addressed a little  
11 bit earlier that we were venturing into this process. And  
12 without getting into too much detail about how we all  
13 maintained our information and evidence, at the time of the  
14 deadline for the responses, we didn't have a complete picture  
15 of what we have and so, you know, we have to anticipate that  
16 there might be something in there that invokes the privilege  
17 but --

18 THE COURT: Actually by the close of document  
19 discovery, I will expect -- and I understand that it's subject  
20 to some discussions now, but -- not say by close of discovery,  
21 we're going to have to have a discussion about a date by which  
22 everybody will produce a privilege log. Except to the extent  
23 that you carve out categories of documents. Then it may be  
24 useful to have a discussion about subjects as to which, or  
25 chronological periods, as to which you won't actually schedule

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1 privilege documents on a log.

2 MR. CARTER: I think that is precisely the discussion  
3 we intend to have, your Honor.

4 THE COURT: I don't know whether any of you have  
5 looked at, but Judge Facciola, who some of you from D.C.  
6 Probably know, together with another author, I forget who it  
7 is, wrote an article in the Federal Court's law review, which  
8 is the on-line journal of the Federal Magistrate Judges'  
9 Association, so it's easy to find on line, that suggested  
10 a simple protocol for trying to simplify privilege logs. And  
11 you may find some useful thoughts in there in terms of ways to  
12 make the process less burdensome.

13 In terms of the concerns Mr. Mohammedi alluded to  
14 about documents from sources who were sensitive and the like, I  
15 do agree with Mr. Mohammedi that if something -- if you're  
16 proposing to withhold something on the basis that it might  
17 endanger somebody, I don't think you can make that decision  
18 unilaterally. There has to be a motion for a protective order,  
19 either as to specific documents and categories of documents,  
20 and witness names, and the like. And what I did look at, Judge  
21 Casey's protective order. It didn't have, if I have read it  
22 correctly, an attorney's eyes only category which is, again,  
23 something that you may want to discuss with the defendants  
24 committee.

25 MR. CARTER: It was, in fact, raised at one of the

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1 meet and confers. It's another issue that is in discussion.  
2 THE COURT: Let me see whether there is anything else  
3 on my notes.

4 Mr. Mohammedi mentioned an index. Has that already  
5 been turned over to you folks, or is about to be.  
6 MR. MOHAMMEDI: Working on it. We have, really,  
7 warehouses that our client, they hired about five people to go  
8 through documents. And we are working with them, trying to  
9 see -- really, we will get them as soon as -- at least we get  
10 some, and we can on a rolling basis, produce them to plaintiffs  
11 and then, hopefully, we'll be done with them. But  
12 like plaintiff mentioned, I don't think this would be done by  
13 April 26th, just humanly impossible for us to.

14 THE COURT: I infer from the letters that both sides  
15 are planning to make some proposal to me, is that --

16 MR. CARTER: On this point, we're a bit confused  
17 because, your Honor, obviously we had submitted a letter  
18 previously suggesting an amendment of the scheduling deadlines.  
19 The Defendant's Executive Committee opposed any amendment of  
20 it. And then, very shortly thereafter on a conference call  
21 with Mr. Mohammedi and Mr. McMahon, we were told that they  
22 didn't foresee any potential in the world that they could  
23 comply with the April 29th deadline. So it seems that some of  
24 the defendants agree with us. We obviously agree that it's not  
25 workable. We're not going to get done by then.

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1           THE COURT: Well, until it's changed, it is the  
2 deadline. So anybody who thinks that it ought to be changed,  
3 needs to get me a proposal that is the result of a meet and  
4 confer in fairly short order.

5           MR. McMAHON: If I can be heard on that.

6           Mr. Carter has put his finger on the nub of the issue.  
7 My colleague and I have institutional clients with huge data  
8 bases and things. And I think we're both of the view  
9 that there needs to be some amendment there, because these  
10 folks are filing these motions to compel because they are  
11 coming up against serious deadlines, obviously. And we would  
12 like to comply with their needs. So I, for one, would go on  
13 the record supporting that. But I think within the defense  
14 counsel, especially Mr. Kabat, he wants everything to be  
15 concluded, you know, on time. I think I discussed this in our  
16 phone conversation, and Mr. Kreindler had suggested that it has  
17 to be global, so I think that's the nature of the problem.

18           THE COURT: That clearly is right, because for me to  
19 set individual deadlines for individual defendants would just  
20 lead to chaos down the road. So you need to get together with  
21 the other members of the Defendant's Executive Committee. And  
22 to the extent that there can be a unified proposal which would  
23 be submitted, if there were dissenters and, on the defense side  
24 if the only dissenters are you folks, you should let me know  
25 that. But something ought to be gotten to me fairly soon.

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1                   MR. KREINDLER: Just a suggestion, your Honor.  
2 Perhaps IF the defendants took the next week to see if they  
3 can adopt a unified position, then we can -- we're not chasing  
4 a moving target. Then they'll get back to us, say they have a  
5 unified position or they don't, and then we know what to do.

6                   THE COURT: That seems fair.

7                   MR. KREINDLER: While I'm on my feet stretching for  
8 the moment, just to share a little positive development. We, I  
9 think, have worked out an agreement with Mr. Barentzen and Ms.  
10 Luque's clients, basically a deal dismissing that whole  
11 category of clients in return for getting the documents  
12 promptly, an opportunity to interview them and take some quick  
13 depositions. We're working on the language. And we should  
14 have that done in a couple of days. I would have that  
15 submitted to the Court.

16                  THE COURT: Well, that is good news. Thank you.  
17 When is our next regularly-scheduled meeting.

18                  MR. CARTER: Your Honor, our next meeting is April  
19 26th.

20                  THE COURT: Okay. Which is before the  
21 April 29th current discovery deadline. So, hopefully, we can,  
22 during that session, talk about the document discovery  
23 deadline.

24                  MR. CARTER: If I could just address that issue,  
25 briefly.

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1           Mr. Kreindler had suggested that maybe the defendants  
2 could confer over the next week. The deadline is really  
3 coming, and the --

4           THE COURT: Why don't I say they should confer by the  
5 end of week.

6           MR. CARTER: I think that would be helpful.  
7           Thank you.

8           THE COURT: I will so direct.

9           Anything further from anyone? Okay. Thank you all.  
10           (Adjourned)

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